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10
11 UNITED STATES BANKRUPTCY COURT
12 FOR THE DISTRICT OF NEVADA
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15 IN RE:

16 BRISTLECONE, INC. DBA
17 BRISTLECONE HOLDINGS,
18 _____ /

19 Case No. 17-50472-btb
20 Case No. 17-50473-btb
21 Case No. 17-50474-btb
22 Case No. 17-50475-btb
23 Case No. 17-50476-btb
24 Case No. 17-50478-btb
25 Case No. 17-50479-btb
26 Case No. 17-50480-btb
27 (Joint Administration Request Pending)

28 BOONFI LLC,
29 _____ /

(Chapter 11)

30 BRISTLECONE LENDING, LLC,
31 _____ /

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1 BRISTLECONE, INC., dba BRISTLECONE HOLDINGS, a Nevada corporation, and
2 its wholly owned subsidiaries, BOONFI LLC, a Nevada limited liability company,
3 BRISTLECONE LENDING, LLC, a Nevada limited liability company, BRISTLECONE SPV
4 I, LLC, a Nevada limited liability, I DO LENDING, LLC, a Nevada limited liability company,
5 MEDLY, LLC, a Nevada limited liability, ONE ROAD LENDING, LLC, a Nevada limited
6 liability company, and WAGS LENDING, LLC, a Nevada limited liability company
7 (collectively the "Debtors"), by and through their proposed counsel, STEPHEN R. HARRIS,
8 ESQ., of HARRIS LAW PRACTICE LLC, hereby move this Court for entry of an emergency
9 order authorizing the maintenance of the Debtors' prepetition Bank Accounts (all as
10 hereinafter defined) and intercompany cash management system.

11 This Motion is based on the points and authorities below, the papers and pleadings on
12 file herein including the Declaration of B. Kyle Ferguson (“Ferguson Declaration”), and any
13 evidence or oral argument of counsel presented at the time of the hearing on this Motion.

1

INTRODUCTION

16 1. On April 18, 2017 (the "Petition Date"), the Debtors each filed a voluntary
17 petition under Chapter 11 of the Bankruptcy Code. Bristlecone, Inc., dba Bristlecone Holdings,
18 LLC ("Bristlecone") is a Nevada closely held corporation, and each of the other seven (7)
19 Debtors are wholly owned subsidiaries of Bristlecone.

20 2. No request has been made for the appointment of a trustee or examiner, and no
21 official committees have yet been established in these cases.

III.

JURISDICTION AND VENUE

24 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
25 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

26 4. The basis for the relief sought herein are Sections 105 and 363 of the Bankruptcy
27 Code, Fed. R. Bankr. P. 4001 and 6003, and LR 4001.

28 5. Venue of Debtors' Chapter 11 cases in this District is proper pursuant to 28

1 U.S.C. §§ 1408 and 1409.

2 **III.**

3 **BACKGROUND**

4 6. Debtors are in the business of providing financial leases to consumers for
 5 tangible goods in various industries, including medical and dental products, pets, household
 6 goods, wedding products and automobile parts. The Debtors continue to operate their
 7 businesses as Debtors and Debtors-In-Possession pursuant to Sections 1107(a) and 1108 of the
 8 Bankruptcy Code. The headquarters for the Debtors' business is located in Reno, Nevada,
 9 although the Debtors all transact business online in order to provide financial leases in
 10 approximately 43 states. As of the Petition Date, the Debtors collectively employed
 11 approximately 23 employees.

12 **IV.**

13 **RELIEF REQUESTED**

14 **A. The Debtors' Bank Accounts**

15 7. To manage their business affairs efficiently and seamlessly, the Debtors must
 16 continue to utilize certain existing bank accounts (collectively, the "Bank Accounts") post-
 17 petition. The Bank Accounts are essential for the Debtors' continued status of staying in
 18 business as a going concern. A summary detailing the Bank Accounts used by the Debtors,
 19 including the bank balances on the Petition Date, is attached hereto as **Exhibit "A"** hereto and
 20 incorporated herein by that reference.

21 8. Post-petition, the Debtors propose to retain their current Bank Accounts to avoid
 22 interruption in their ongoing business practices which require daily electronic deposit and
 23 withdrawal activity from the Bank Accounts. As indicated on Exhibit "A", the Bank Accounts
 24 are located primarily at Wells Fargo Bank, N.A., with one account located with Utah
 25 Community Bank.

26 9. As indicated in Paragraph 6 above, the Debtors' revenue is derived from lease
 27 payments from retail customers and from sales of lease contracts to Monterey Financial
 28 Services. Specifically, consumers that desire to lease goods from approved retailers, apply for

1 approval of the lease with one of the Debtor entities depending on the specific lease product
 2 being requested. Once approval is obtained and the retailer provides the consumer with the
 3 goods, payments are tendered from the Debtors to the retailer for the cost of that good. Lease
 4 payments are then collected by a servicer, Monterey Financial Services ("Monterey"), and
 5 collected funds are deposited in the Debtors' various bank accounts after deduction of certain
 6 servicing fees. The Debtors also sell many of the lease contracts outright to Monterey, and
 7 obtain payment from Monterey to continue to fund the Debtors' business overhead expenses
 8 and future leases to consumers. This process results in a daily collection and transfer of funds
 9 via automatic ACH/electronic deposits and withdrawals from the Debtors' Bank Accounts. As
 10 set forth in the Ferguson Declaration, because of the necessity to honor funding of new leases
 11 on a daily basis, the Debtors cannot afford an interruption in access to their Bank Accounts. All
 12 of the funds on deposit in the Bank Accounts on the Petition Date were unencumbered and not
 13 subject to any lenders' cash collateral, with the possible exception of accounts for the Debtor
 14 Bristlecone SPV I, LLC, that are subject to a Loan and Security Agreement in favor of FRS BC,
 15 LLC, as assignee of Princeton Alternative Income Fund, LP and Westminster National Capital
 16 Co. ("FRS BC"). Currently, the Debtors do not use any funds in the Bristlecone SPV I, LLC
 17 accounts other than to pay the secured lender.

18 10. Although each individual Debtor collects its own lease revenues in its designated
 19 bank account, on a regular basis, the various subsidiaries of Bristlecone transfer certain funds to
 20 a bank account maintained by the parent company, Bristlecone, in order to pay general overhead
 21 and payroll expenses that inure to all of the Debtor entities. The bank account that is used to
 22 deposit funds from the subsidiaries to pay combined overhead costs is Wells Fargo checking
 23 account #4635. *See Ferguson Declaration.*

24 **B. Specific Procedures Requested**

25 11. Through this Motion, the Debtors request that this Court grant the following
 26 relief and authorize the following procedures:

27 a. that the Debtors are authorized and empowered to: 1) maintain all of their
 28 Bank Accounts in existence as of the Petition Date and as listed and described in Exhibit

1 "A"; 2) treat the Bank Accounts for all purposes as Debtor-In-Possession Accounts; 3)
 2 use, in their present form, existing checks and other documents related to the Bank
 3 Accounts; 4) pay post-petition ordinary course bank fees in connection with the Bank
 4 Accounts; and 5) perform their obligations under the documents and agreements
 5 governing the Bank Accounts;

6 b. that all Banks at which the Debtor maintains Bank Accounts are
 7 authorized and directed to: 1) continue to administer, service, and maintain the Bank
 8 Accounts as such Bank Accounts were administered, serviced, and maintained prior to
 9 the Petition Date, without interruption and in the usual and ordinary course; and 2) to
 10 pay any and all checks, drafts, wires, automated clearinghouse transfers, electronic fund
 11 transfers, or other items presented, issued, or drawn on the Bank Accounts (collectively,
 12 the "Debits") arising on or after the Petition Date, so long as there are sufficient collected
 13 funds in the relevant Bank Accounts and in accordance with the agreements governing
 14 said Bank Accounts, including, without limitation, any prepetition cash management
 15 agreements, merchant service agreements, or treasury services agreements;

16 c. that Debits issued on the Bank Accounts prior to, but presented after, the
 17 commencement of the Debtors' Chapter 11 cases are honored and paid;

18 d. that if the Debtors deem that any transactions should not be honored, that
 19 the Debtors shall promptly furnish to the Banks a list of those Debits drawn or issued
 20 that should not be paid. The Banks are authorized and directed to rely on the
 21 representations of the Debtors as to which Debits are authorized to be honored and
 22 dishonored, whether or not such Debits are dated prior to, on, or subsequent to the
 23 Petition Date, and whether or not the Banks believe the payment is authorized by an
 24 order of the Court. To the extent that the Debtors direct that any Debit be dishonored,
 25 the Debtors may issue replacement Debits consistent with the orders of this Court.

26 e. that the Banks are authorized to debit the Debtors' Bank Accounts in the
 27 ordinary course of business for all Debits presented for payment or exchanged for
 28 cashier's checks prior to the commencement of the Debtor's Chapter 11 Case;

f. that nothing contained in this Motion or its subsequent order may prevent the Debtors from closing the Bank Accounts as they deem necessary and appropriate;

g. that the Debtors reimburse the Banks for any claim arising prior to or after the Petition Date in connection with Debits deposited with the Banks which have been dishonored or returned for insufficient funds in the applicable accounts;

h. that each Bank that maintained one or more Bank Accounts implements reasonable handling procedures to effectuate the terms requested in this Motion. The Debtors request that no Bank that implements such handling procedures be liable to the Debtors or their estates, or otherwise held in violation of this Motion or its subsequent order, for honoring a prepetition Debit or other Debit: 1) at the direction of the Debtors that such prepetition Debit or other Debit be honored; 2) in the good faith belief that the Court has authorized that such prepetition Debit or other Debit be honored; or 3) as a result of an innocent mistake made despite implementation of such handling procedures;

i. that the relief, rights, and responsibilities requested herein are deemed to apply to any and all Bank Account maintained in the Debtors' names;

j. that to the extent any other order is entered directing a Bank to honor Debits made, drawn, or issued in payment of prepetition claims, the obligation to honor such items are subject to the order authorizing this Motion;

k. that the Debtors and the Banks are authorized and directed to continue to perform pursuant to the terms of any prepetition documents and agreements governing the Bank Accounts, except and to the extent otherwise directed by the terms of this order. The Debtors request that the Banks be authorized to continue offsetting any funds deposited in the Bank Accounts by the Debtors to the extent necessary to cover any fees, charges, and assessments set forth or provided for in the agreements governing the Bank Accounts or as otherwise permitted in the ordinary course of business pursuant to the agreements governing the Bank Accounts. The parties to such agreements seek to continue to enjoy the rights and remedies afforded them under such agreements, except to the extent modified by the Court or by operation of the Bankruptcy Code.

V.

LEGAL ARGUMENT

A. The Court Has The Authority To Grant The Relief Requested

Uncertainty and risk surround the inception of every Chapter 11 case. Included within this class of risks is a debtor-in-possession's struggle to maintain current operations. In these Chapter 11 cases, the Debtors urgently require the continued use of their Bank Accounts. Absent the Bank Accounts, there is the possibility that the Debtors' Chapter 11 estates might sustain irreparable damage by losing customers, retailers and revenues. To avert this prospect, the Debtors seek authority to continue the operation of their existing Bank Accounts.

B. Cause Exists To Authorize The Debtor To Utilize Existing Bank Accounts

A necessary aspect of the Debtors maintaining their business is the Debtors being permitted to continue to utilize their existing Bank Accounts and continue intercompany transfers of funds to pay common overhead expenses. As numerous courts have indicated, the Bankruptcy Code grants discretionary authority to a bankruptcy court to allow the continued use of bank accounts and merchant accounts. See, e.g., In re The Charter Co., 778 F.2d 618 (11th Cir. 1985) (court noted that the bankruptcy court authorized the Debtor to maintain its existing bank accounts); In re Lorber Indus. of Cal., 373 B.R. 663, 665 (B.A.P. 9th Cir. 2007) (discussing that the bankruptcy court allowed the debtor to continue using its prepetition workers' compensation program bank account for the purposes of administering benefits); In re Grant Broad., Inc., 75 B.R. 819, 820 (E.D. Pa. 1987) (court noted an order by the bankruptcy court authorizing use of cash collateral and prepetition bank accounts); In re Charter Behavioral Health Systems, LLC, 292 B.R. 36, 41 (Bankr. D. Del. 2003) (court allowed the Debtor to continue to use its existing bank accounts without the necessity to close all prepetition accounts and open new post-petition accounts); In re Hechinger Inv. Co. Of Del., Inc. 282 B.R. 149, 150 (Bankr. D. Del. 2002) (court entered an order on the petition date authorizing the Debtor to continue to use its existing prepetition bank accounts); In re UAL Corp., 2002 WL 34344255, 1 (Bankr. N.D. Ill. 2002) (court authorized the Debtor, within the reasonable exercise of its business judgment, to continue using all of its bank accounts in existence on the petition date);

1 In re New York City Shoe, Inc., 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (court approved of the
 2 debtor's continued routine deposits of post-petition funds into prepetition bank accounts).

3 Pursuant to U.S. Trustee Guideline 4.46, a Chapter 11 debtor in possession must close
 4 its prepetition bank accounts and open new accounts. This requirement is designed to: (a)
 5 provide a clear line of demarcation between prepetition and post-petition transactions and
 6 operations; and (b) block the inadvertent payment of prepetition claims through the payment of
 7 checks drawn prior to the commencement of a debtor's case. However, courts often deviate
 8 from the strict recommendations of Guideline 4.4.6 based upon the unique circumstances of
 9 each case and if doing so facilitates a debtor's successful reorganization. See, e.g., In re The
 10 Colad Group, Inc., 324 B.R. 208, 217 (Bankr. W.D.N.Y 2005); In re Charter Behavioral Health
 11 Sys., LLC, 292 B.R. at 41.

12 As stated in the Ferguson Declaration, to require the Debtors to close their Bank
 13 Accounts and to open new bank accounts would cause substantial disruption and delay in the
 14 Debtors' ongoing business operations and would materially and adversely affect the Debtors'
 15 business. To avoid such problems and to ensure as smooth a transition into Chapter 11 as
 16 possible, it is imperative that the Debtors be permitted to continue using their current existing
 17 Bank Accounts and intercompany cash management system in order to pay common overhead
 18 post-petition expenses in the ordinary course of business.

19 The Debtors request that their Bank Accounts be deemed and designated as Debtor-in-
 20 Possession Accounts, and that their maintenance and continued use, in the same manner and
 21 with the same account numbers, styles and document forms (including checks) as during the
 22 prepetition period, be authorized, subject only to: (a) designation of the Bank Accounts as
 23 Debtor-in-Possession Accounts; and (b) a prohibition against honoring prepetition checks
 24 without specific authorization from this Court and the Debtor. The Debtors will advise the
 25 Banks not to honor checks issued prior to the commencement of this Chapter 11 Case, except as
 26 authorized by this Court. By so advising the Banks, the Debtors will have achieved the goals of
 27 the bank-account-closing requirement - (a) establishing a clear demarcation between prepetition
 28 and post -petition checks, and (b) blocking the inadvertent payment of prepetition checks-

1 without disrupting the Debtors' ongoing business operations.

2 The Court has the authority to grant the relief requested by the Debtors concerning their
 3 Bank Accounts under Section 105 and 363 of the Bankruptcy Code, and it is proper for this
 4 Court to grant such relief as it is in the best interest of the creditors of the Debtors' estates.
 5 Again, Section 105(a) provides, in pertinent part, that "[t]he court may issue any order, process,
 6 or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C.
 7 § 105(a). Because the maintenance and continued use of the Bank Accounts is crucial to the
 8 Debtors' ongoing business operations, and ultimately their reorganization, this Court has the
 9 authority to order the relief sought herein by virtue of Section 105(a).

10 **C. The Requirements Of Bankruptcy Rule 6003 Have Been Satisfied And Bankruptcy**
 11 **Rule 6004(h) Is Properly Waived**

12 Pursuant to Sections 105(a) and 363(c)(1) of the Bankruptcy Code, the Debtor requests
 13 that this Court authorize the Debtors to continue the collection and disbursement of cash in
 14 accordance with their existing Bank Accounts. Because the Debtors process a significant
 15 number of ACH transactions on a daily basis to facilitate the unique needs of their consumer
 16 leasing businesses, any disruption to the Bank Accounts would seriously harm the Debtors and
 17 estates.

18 However, Fed.R. Bankr. P. 6003(b) provides "except to the extent that relief is
 19 necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the
 20 filing of the petition, issue an order granting the following: . . . a motion to use, sell, lease or
 21 otherwise incur an obligation regarding property of the estate, including a motion to pay all or
 22 part of a claim that arose before filing of the petition. . ." As described above and in the
 23 Ferguson Declaration, if the Bank Accounts are disrupted, the Debtors will likely be unable to
 24 escape the immediate and irreparable harm that will follow. In order to ensure the Debtors'
 25 chances of successfully reorganizing and maximizing value for the Debtors' creditors, this
 26 Court should find that the exception set forth in Fed. R. Bankr. P. 6003 applies in this Chapter
 27 11 Case.

28 Moreover, Fed. R. Bankr. P. 6004(h) provides that an "order authorizing the use, sale, or

1 lease of property . . . is stayed until the expiration of 14 days after entry of order, unless the
 2 court orders otherwise." In view of the urgency of the relief requested herein and the risk to the
 3 Debtors' operations if the Debtor's Bank Accounts are interrupted, a 14 day stay of the relief
 4 sought herein is impractical. Accordingly, the Debtors request that this Court waive the stay
 5 under Fed. R. Bankr. P. 6004(h) and provide in the order granting the relief sought herein that
 6 such order shall be effective immediately *nunc pro tunc* to the Petition Date.

7 **VI.**

8 **CONCLUSION**

9 WHEREFORE, Debtors respectfully request that the Court enter an order authorizing
 10 the maintenance of the Debtors' prepetition Bank Accounts and continued intercompany cash
 11 management system as set forth herein and in the Ferguson Declaration, and that any such order
 12 include a waiver of the stay under Rule 6004(h); and for such other relief as is just and proper.

13 DATED this 21st day of April, 2017.

14
 15 STEPHEN R. HARRIS, ESQ.
 16 HARRIS LAW PRACTICE LLC

17 /s/ *Stephen R. Harris*

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Proposed Attorneys for Debtors

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EXHIBIT “A”

Bank Name	Bank Address	Bank Account Number	Account Name	Account Type	Balance 04/19/2017	Balance 04/19/2017
					Start of Day	End of Day
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████5780	One Road	Checking	\$ 26,303.48	\$ 43,481.86
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████6753	WAGS	Checking	\$ 80,726.77	\$ 169,282.75
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████5553	DO	Checking	\$ 45,808.04	\$ 45,015.06
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████4635	Bristlecone Holdings	Checking	\$ (9,442.89)	\$ 150,557.11
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████4643	Bristlecone Financing	Checking	\$ 40,413.47	\$ 41,972.53
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████6810	Bristlecone Inc. - Checking	Checking	\$ 1,630.61	\$ 1,630.61
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████2732	SPV1 - Outgoing	Checking	\$ 136,386.67	\$ 492.91
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████257	SPV1 - Incoming	Checking	\$ -	\$ -
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████0394	Boon LLC	Checking	\$ 3,533.02	\$ 3,533.02
Wells Fargo	Wells Fargo Bank, N.A. (825) P.O. Box 6995 Portland, OR 97228-6995	████████0394	Boon LLC	Lockbox		
Utah Community Bank	Sandy, UT 84094	████████5856	Bristlecone Holdings LLC	Business Checking Account	\$ 0.50	\$ 0.50
					\$ 325,359.67	\$ 455,966.35